



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2005-05491

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226458.

The City of Waco (the "city") received seven requests from the same requestor for information pertaining to the sale of alcoholic beverages, certain personnel policies, and specified criminal investigations. You state that you will release some of the requested information but claim that other information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by section 550.065 of the Texas Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Department of Public Safety (the "DPS") or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more

¹We assume the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

pieces of information specified by the statute. *See id.* In this instance, you state, and we agree, that the requestor has not provided the city with at least two of the listed three pieces of information. Accordingly, we conclude that the city must withhold the submitted accident report form pursuant to section 552.101 in conjunction with section 550.065(c)(4) of the Transportation Code.

You also assert that some information must be withheld under common law privacy. Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the submitted records and have marked the information that the city must withhold under section 552.101 in conjunction with common law privacy.

We next turn to your claim that some of the requested information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that three of the individuals at issue timely elected to keep such information confidential. We have indicated the information that the city must withhold under section 552.117.

We note that the social security numbers of employees who did not make a timely election and those belonging to members of the public are also excepted from disclosure.

Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the city must withhold the social security numbers contained in the submitted information under section 552.147.³

You also assert some of the remaining information is excepted under section 552.130. Section 552.130 of the Government Code provides in relevant part the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130(a)(1),(2). We note, however, that the purpose of section 552.130 is to protect the privacy interests of individuals. Since the right of privacy lapses at death, Texas motor vehicle record information that pertains to any deceased individual may not be withheld under section 552.130. *See generally Moore v. Charles E. Pierce Film Enters. Inc.*, 589 S. W. 2nd 489 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-147 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Because the Texas motor vehicle record information you have marked pertains to persons who are living and vehicles in which living individuals have an ownership interest, this information must be withheld under section 552.130. We have also marked additional information that must be withheld on this basis.

Your last assertion is that section 552.136 of the Government Code is applicable to some of the submitted information. This exception provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

²Added by Act of May 23, 2005 79th Leg., R.S., S.B. 1485 § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Under section 552.136 the city must withhold the bank account numbers it has marked.

To conclude, the city must withhold the accident report under section 552.101 in conjunction with 552.065(b). We have also marked information that the city must withhold pursuant to section 552.101 in conjunction with common law. Personal information that pertains to the current or former employees who made a timely election to keep such information confidential must be withheld pursuant to section 552.117(a)(1). The city must withhold social security numbers under section 552.147. Motor vehicle record information that pertains to persons who are living and vehicles in which living individuals have an ownership interest must be withheld under section 552.130. The marked bank account numbers must be withheld under section 552.136. The rest of the submitted information must be released.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

⁴As our ruling on these issues is dispositive, we need not address your remaining argument against disclosure.

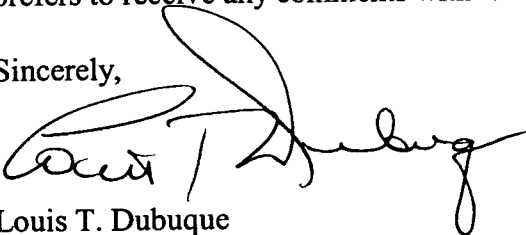
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque", written over a horizontal line.

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 226458

Enc. Submitted documents

c: Mr. Larry C. Kelley
2412 Oak Cliff Drive
Waco, Texas 76710
(w/o enclosures)